

January 14, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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Ms. Judith A. Hunter
Paralegal
City Attorney's Office
P.O. Box 409
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OR99-0100

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 121061.

The City of Georgetown (the "city") received a request for copies of "all" of a police report dated February 17, 1995 involving the requestor's arrest on driving while intoxicated charges. In response to the request, you submit to this office for review a copy of the records at issue. You contend that the submitted information responsive to the request is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

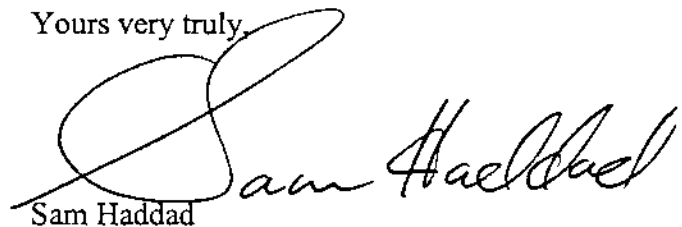
We note at the outset that included among the submitted information, you have provided a report of the results of an intoxilyzer test. Section 724.018 of the Transportation Code provides that "a person who has given a specimen at the request of a peace officer" may obtain on request "full information concerning the analysis of the specimen." Where a statute provides an individual with a special right of access to information, that information may not be withheld from that individual pursuant to the law-enforcement exception. *See* Open Records Decision Nos. 613 (1993), 623 (1994). Since the requestor here is the subject of the test report, you must release the test report to him under section 724.018 of the Transportation Code.

We next consider your claim under section 552.108, the "law enforcement" exception, of the Government Code. Section 552.108(a)(1) provides an exception from disclosure for information that is held by a law enforcement agency or prosecutor and that deals with the detection, investigation, or prosecution of

crime, when release of such information would interfere with the detection, investigation, or prosecution of crime. You explain that the Williamson County Attorney's Office has notified the city that the requestor "is currently on parole from a 10-year sentence imposed on March 27, 1996, for driving while intoxicated, a second conviction." Based on this information, you contend that the case is still pending and the information may be withheld under section 552.108(a)(1). However, since there is not an active investigation, we conclude that you have not shown that release of this information would interfere with the prosecution of crime. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); see Open Records Decision No. 216 at 3 (1978). Therefore, based on the arguments presented and information at issue, we conclude that the information may not be withheld under section 552.108 of the Government Code. See Open Records Decision No. 363 (1983) (if governmental body does not establish how and why exception applies, no basis exists for pronouncing it protected).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over a large, stylized, looping flourish that starts under the word "Yours" and extends across the signature.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 121061

Enclosures: Submitted documents

cc: Mr. Billy Ray Hibdon
504-A E. Janis Drive
Georgetown, Texas 78628
(w/o enclosures)